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In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-956

BILLIE K. FREEMAN, Guardian of TERRY FREEMAN; VERNON RANDALL OSTLER, a minor, by STEPHEN OSTLER, his father and natural guardian; MARCK CHARLES SIMMONS, by and through his guardian ROBERT C. SIMMONS, *Petitioners*,

—v.—

ALMON FLAKE, ET AL., *Respondents*.

AL WHITE, a minor, by his father, V. T. WHITE, *Petitioner*,

—v.—

BOARD OF EDUCATION OF HOBBS MUNICIPAL SCHOOL DISTRICT NO. 16, ET AL., *Respondents*.

GREGORY A. CRANSON and RANDALL J. CRANSON, minors, by and through their natural guardian, WALTER N. CRANSON, *Petitioners*,

—v.—

EAST OTERO SCHOOL DISTRICT R-1, ET AL., *Respondents*.

GARY CHRISTMAS, a minor, by his father and next friend, WILLIAM R. CHRISTMAS, *Petitioners*,

—v.—

THE EL RENO BOARD OF EDUCATION, ET AL., *Respondents*.

RESPONSE OF THE EL RENO BOARD OF EDUCATION, ET AL., TO PETITION FOR WRIT OF CERTIORARI

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of Counsel:
RUPERT M. FOGG
FOGG & FOGG
214 Citizens Nat'l Bank Bldg.
El Reno, Oklahoma 73036

RICHARD M. FOGG
FOGG & FOGG
214 Citizens National Bank Building
El Reno, Oklahoma 73036
HARVEY L. HARMON
FRANKLIN, HARMON & SATTERFIELD
1717 Fidelity National Building
Oklahoma City, Oklahoma 73102
Attorneys for Respondents, The El Reno Board of Education, et al.

February, 1972

UTTERBACK TYPESETTING CO., 519 W. CALIF., OKLAHOMA CITY, PH. 235-0030

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In response to the Petition for Writ of Certiorari filed by Petitioner and received by this Respondent on January 28, 1972, Respondent respectfully submits:

STATEMENT OF CASE

Petitioner, Gary Christmas, was graduated on May 22, 1970, from El Reno High School and was furnished a certificate of graduation and accompanying transcript which is the only official permanent school record evidencing graduation.

Christmas was not given a diploma, as he chose not to participate in the commencement exercise where diplomas are awarded. Christmas was not expelled, suspended or denied the right to his education.

The student petitioner Christmas appealed to the Court of Appeals for the Tenth Circuit. The Christmas case was argued and decided separately from the Freeman, Cranson and White cases. In affirming the District Court's decision denying injunctive relief, the Court of Appeals held that the facts of the *Christmas* case differed from the other three "hair" cases since Christmas was not suspended.

RESPONSE TO "QUESTIONS PRESENTED"

(Petitioner's Brief, page 3)

Petitioner has set forth the question "whether the state may constitutionally expel or punish male public school students whose hair length exceeds the limits prescribed by school officials." Petitioner's own limitation of the question does not traverse the settled facts in the *Christmas* case since nowhere in the record does it ever appear that the Christmas boy was expelled or punished.

RESPONSE TO "REASONS FOR GRANTING THE WRIT"

(Petitioner's Brief, page 9)

This Court has in the past denied certiorari in at least five "hair" cases, *Breen* v. *Kahl*, 419 F.2d 1034 (7th Cir. 1969) *cert. denied*, 398 U.S. 937 (1970); *King* v. *Saddleback Junior College District*, 445 F.2d 932 (9th Cir. 1971), *cert. denied* 92 S.Ct. 342 (1971), 40 U.S.L.W. 3249 (1971); *Jackson* v. *Dorrier*, 424 F.2d 213 (6th Cir. 1970), *cert. denied*, 400 U.S. 850 (1970); *Ferrell* v. *Dallas Independent School District*, 392 F.2d 697 (5th Cir. 1968), *cert. denied*, 393 U.S. 856 (1969); *Stevenson* v. *Board of Education of Wheeler County, Georgia*, 426 F.2d 1154 (5th Cir. 1970), *cert. denied*, 400 U.S. 957 (1970).

In addition to the disposition of the cases above cited, Mr. Justice Black, sitting as an individual Justice assigned to the Fifth Circuit, in *Karr* v. *Schmidt*, 401 U.S. 1201 (1971), refused to interfere with the school authorities.

The attempted appeal by writ of certiorari of the Petitioners presents no issue more compelling than any advanced so far in the cases above cited, supra.

The Petitioners, by combining these cases in one petition for a writ of certiorari, do not recognize the clear factual distinction between this Respondent's case and all of the other so-called "hair" cases. As the Circuit opinion expressly says, "The facts differ from Freeman v. Flake and other hair cases decided this day in that the student *was not suspended . . . .*" *Christmas* v. *The El Reno Board of Education, Independent School District No. 34, et al.*, 449 F.2d 153 (10th Cir. 1971). (Emphasis supplied.)

This Respondent's case has no place in this combined appeal and certiorari should be denied on behalf of this Respondent.

CONCLUSION

For all of the above reasons, it is respectfully urged that the writ prayed for by Petitioners be denied.

RICHARD M. FOGG
FOGG & FOGG
214 Citizens National Bank Building
El Reno, Oklahoma 73036

HARVEY L. HARMON
FRANKLIN, HARMON & SATTERFIELD
1717 Fidelity National Building
Oklahoma City, Oklahoma 73102

Attorneys for Respondents,
The El Reno Board of Education, et al.

of Counsel:
RUPERT M. FOGG
FOGG & FOGG
214 Citizens National Bank Building
El Reno, Oklahoma 73036

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CERTIFICATE OF SERVICE

I, RICHARD M. FOGG, Attorney for Respondents, do hereby certify that all parties required to be served have been served copies of the foregoing Response of The El Reno Board of Education, et al., To Petition for Writ of Certiorari on this _____ day of February, 1972. The following Attorneys for Petitioners,

Paul A. Phillips
520 Simms Building
Albuquerque, New Mexico 87101

Dan McKinnon, III
608 First National Bank Building
Albuquerque, New Mexico 87101

Stephen F. Williams
Fleming Law 205
University of Colorado
Boulder, Colorado 80302

Philip F. Horning
903 First National Bank Building
Oklahoma City, Oklahoma 73102

James N. Barber
716 Newhouse Building
Salt Lake City, Utah, 84111

Melvin L. Wulf
Joel M. Gora
American Civil Liberties Union
Foundation
156 Fifth Avenue
New York, New York 10010

have each been mailed three (3) true and correct copies thereof, first class postage prepaid, this _____ day of February, 1972.

RICHARD M. FOGG
Attorney for Respondents,
The El Reno Board of Education, et al.